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Injunction-Carriers-Rates-Conclusions of Law

INJUNCTION—CARRIERS—RATES—CONCLUSIONS OF LAW—This is an action by twenty-three railroad companies seeking to set aside an order of the Public Service Commission of Indiana as "unjust, arbitrary, unreasonable, and illegal." This order reduced carload freight rates on scrap iron and steel moving in intrastate commerce in Indiana, and was issued on complaint of shippers, after an investigation of the reasonableness and lawfulness of such rates. Appellee's evidence consisted of affidavits that the order if permitted to become effective would reduce the rates thirty-six per cent, and set forth the reductions in amounts. The total reduction was set forth in one as one-hundred thousand dollars. Appellants filed an affidavit, which conflicted with the allegations of the complaint, setting out that the existing rates were not "unjust, unreasonable, exorbitant, discriminatory, or in any wise unlawful," and that order of the Commission was not "arbitrary, unjust, unreasonable, and illegal." A demurrer to the complaint was filed and overruled, a general denial was filed, and, after a hearing, a temporary injunction was issued. The Commission appealed. *Held.* Judgment reversed with direction to dissolve the temporary injunction. *Public Service Commission of Indiana et al. v. Baltimore and Ohio et al.*, Supreme Court of Indiana (Jan. 16, 1930), 169 N. E. 530. Two main points are involved in this case. The first is in regard to the issuing of a temporary injunction. The court held that there must be at least a prima facie showing that complainant is entitled to final relief before it could be obtained. This departs from the language of the prior Indiana cases. The rule as stated in *Risch v. Burch*, 175 Ind. 621, was, "that to authorize a court to grant such relief, it is not necessary that a case be made out that will entitle the plaintiff to relief at all events on the final hearing, and that on appeal the discretion of the court will not be interfered with, when there is no abuse of that discretion, and that an order will be upheld where complaint and the evidence show the transaction in question is a proper subject of investigation in a court of equity." The same language is found in *City of LaPorte v. Scott*, 166 Ind. 78, *Spicer v. Hoop*, 51 Ind. 365, and *Washington Water Power Co. v. Crane*, 233 P. 878, uses that language and cites *Spicer v. Hoop*. "It is not necessary that the court be satisfied that plaintiff will certainly prevail on the final hearing, a probable right and a probable danger that such right will be defeated without the interposition of Equity, is all that need be shown. When there is grave doubt as to the complainants right, preliminary relief will generally be denied." Pomeroy, Equity Jurisprudence, § 1685. Language similar to that in the principal case is found in *Atkinson v. Roosevelt County*, 214 P. 74, where it was said, "allowance of a temporary injunction is vested largely in the sound legal discretion of the court, which will not be disturbed except in cases of manifest abuse. The party seeking relief by temporary injunction has the burden of establishing a prima facie right to it." Similarly, *Blackstone Hall Co. v. Rhode Island Hospital Trust Co.*, 39 R. I. 69, 97 A. 484; *Fritz v. Presby*, 16 A. 419. See *Rowland v. Kellog Power Co.*, 233 P. 869, where it says such relief will be granted if plaintiff makes out a prima facie case, or if it appears from the pleadings that a case is presented proper for investigation on the final hearing. The language of these two lines of cases is different but it is clear that the principal case would have had the same result under either if they be taken

to be different rules and not merely a distinction in choice of words. There exists a presumption in favor of the order of the Commission. *Vandalia* R .R. *v. Schnull,* 188 Ind. 87, 122 N. E. 225. To rebut this appellee introduced no evidence that the order was "arbitrary, unjust, unreasonable, and illegal." The affidavits cannot serve that purpose as they merely charge that there will be a reduction of returns on that kind of freight. *L. & N. v. Garret,* 231 U. S. 298. Nor can the allegations of the complaint serve that purpose. First, because there is a conflict of evidence between the affidavits; second, it is necessary to introduce the complaint into evidence for it to become a part of the evidence. (Sec. 1228, Burns', 1926); third, even if complaint were a part of the evidence, it would not be sufficient to sustain the granting of the temporary injunction as it merely alleges the conclusions of the pleader that the existent rates were not "unjust, etc.," and that the order of the Commission was "arbitrary, etc." These are regarded as conclusions of law and therefore are not to be considered as allegations of the facts necessary to support the conclusion under Sec. 360, Burns', 1926; *Central Bank v. Martin,* 70 Ind. A. 387, 121 N. E. 57. As to the distinctions between evidentiary facts, operative facts, and conclusions of law it is difficult to define the dividing line. "It is conceded that no one has as yet defined the term 'conclusion of law' with such exactness and nicety that the definition will always be the true test." Text-writers have been content with stating that certain specific allegations are conclusions of law. *Benson v. Pedio,* 6 Alaska 1. Cook, 21 Columbia L. R. 416, says a "conclusion of law" is a generic statement of the application of some legal rule to a specific group of facts; that it is as true under the Code as at Common Law that a large portion of the accepted methods of statements are in form mixed statements of the "dry actual facts" and the legal conclusions therefrom; that how specific or how generic allegations may, or must be, cannot be settled by mere logic, but according to notions of fairness and convenience; that judicial precedent has emerged, as a basis for guidance, from the chaos resulting from the substitution of the simple, but ambiguous, provision in the Code; that the complaint shall contain "the statement of the facts constituting the cause of action in plain, concise language, without repetition," for the Common Law forms and precedents.

In accord with the determination of the court in the principal case, that the allegations were conclusions of law, see *Silberchain v. U. S.,* 285 F. 397, where allegations that the decision of a Board was "arbitrary, unjust, and unlawful" were held conclusions of law; *Benson v. Pedio,* 6 Alaska 1, where averments that certain demands "are not lawful," that a proceeding was "unauthorized, without force and effect, and void," that an act was or was not done "as required by law" were held to be conclusions of law; *Estrada v. Kreeger Store,* 84 S. 786, that allegation that arrest was "unwarranted" and "unjust," and that prosecution was "unfounded" were determined conclusions of law; *Sanders State Bank v. Hawkins,* 142 S. W. 84, that allegation that state officers in closing the bank acted "without authority of law," is a conclusion of law.

The allegations in the principal case are of the same type, and identical in some instances, and are clearly, on authority, conclusions of law.

H. N. F.